

## 5 CFR CHAPTER XVI--Office Of Government Ethics

**Part 2634**--Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture; and

**Part 2635**--Standards Of Ethical Conduct For Employees of the Executive Branch

A. Employees who are designated as “confidential filers” must submit the Office of Government Ethics (OGE) Form 450 Financial Disclosure Report. Under **Part 2634.904** Confidential filer is defined as:

(a) Each officer or employee in the executive branch whose position is classified at GS-15 or below of the General Schedule prescribed by 5 U.S.C. 5332, or the rate of basic pay for which is fixed, other than under the General Schedule, at a rate which is less than 120% of the minimum rate of basic pay for GS-15 of the General Schedule; each officer or employee of the United States Postal Service or Postal Rate Commission whose basic rate of pay is less than 120% of the minimum rate of basic pay for GS-15 of the General Schedule; each member of a uniformed service whose pay grade is less than O-7 under 37 U.S.C. 201; and each officer or employee in any other position determined by the designated agency ethics official to be of equal classification; if:

(1) The agency concludes that the duties and responsibilities of the employee's position require that employee to participate **personally and substantially (as defined in Sec. 2635.402(b)(4) of this chapter)** through decision or the exercise of significant judgment, in taking a Government action regarding:

(i) Contracting or procurement;

(ii) Administering or monitoring grants, subsidies, licenses, or other federally conferred financial or operational benefits;

(iii) Regulating or auditing any non-Federal entity; or

(iv) Other activities in which the final decision or action will have a direct and substantial economic effect on the interests of any non-Federal entity; or

(2) The agency concludes that the duties and responsibilities of the employee's position require the employee to file such a report to avoid involvement in a real or apparent conflict of interest, and to carry out the purposes behind any statute, Executive order, rule, or regulation applicable to or administered by that employee. Positions which might be subject to a reporting requirement under this subparagraph include those with duties which involve investigating or prosecuting violations of criminal or civil law.

Example 1. A contracting officer drafts the requests for proposals for data processing equipment of significant value, which is to be purchased by his agency. He works with substantial independence of action. The contracting officer should be required to file a confidential financial disclosure report.

Example 2. An agency environmental engineer inspects a manufacturing plant to ascertain whether the plant complies with a permit to release a certain effluent into a nearby stream. Any violation of the permit standards may result in civil penalties for the plant, and in criminal penalties for the plant's management based upon any action which they took to create the violation. If the agency engineer determines that the plant does not meet the permit requirements, he can require the plant to terminate release of the effluent until the plant satisfies the permit standards. Because the engineer exercises substantial discretion in regulating the plant's activities, and because his final decisions will have a substantial economic effect on the plant's interests, the engineer should be required to file a confidential financial disclosure report.

(2) The agency concludes that the duties and responsibilities of the employee's position require the employee to file such a report to avoid involvement in a real or apparent conflict of interest, and to carry out the purposes behind any statute, Executive order, rule, or regulation applicable to or administered by that employee. Positions which might be subject to a reporting requirement under this subparagraph include those with duties which involve investigating or prosecuting violations of criminal or civil law.

**Sec. 2635.402(b)(4) Disqualifying financial interests.**

“Personal and Substantial” is defined as:

(4) Personal and substantial. To participate personally means to participate directly. It includes the direct and active supervision of the participation of a subordinate in the matter. To participate substantially means that the employee's involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. **A finding of substantiality should be based not only on the effort devoted to a matter, but also on the importance of the effort.** While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. Personal and substantial participation may occur when, **for example, an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.**

**Sec. 2634.905.** Exclusions from filing requirements.

Any individual or class of individuals described in Sec. 2634.904 of this subpart, including special Government employees unless otherwise noted, **may be excluded from all or a portion of the confidential reporting requirements of this subpart**, when the agency head or designee determines that:

(a) The duties of a position make remote the possibility that the incumbent will be involved in a real or apparent conflict of interest;

(b) The duties of a position involve such a low level of responsibility that the submission of a confidential financial disclosure report is unnecessary because of:

- (1) The substantial degree of supervision and review over the position; or
- (2) The inconsequential effect of any potential conflict on the integrity of the Government;

(c) The use of an alternative procedure approved in writing by the Office of Government Ethics is adequate to prevent possible conflicts of interest.